

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: John Butler	Team: Squad #5	CCRB Case #: 201411481	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 11/11/2014 9:00 PM	Location of Incident: East Gunhill Road and Perry Avenue	Precinct: 52	18 Mo. SOL 5/11/2016	EO SOL 5/11/2016	
Date/Time CV Reported Wed, 11/12/2014 11:52 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 11/12/2014 11:52 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Robert King	03180	924028	052 PCT
2. LT Kevin Maloney	00000	904435	PBBX

Officer(s)	Allegation	Investigator Recommendation
A.SGT Robert King	Abuse: Sgt. Robert King stopped § 87(2)(b) and § 87(2)(b)	
B.LT Kevin Maloney	Abuse: Lt. Kevin Maloney stopped Pheobe Merraro and § 87(2)(b)	
C.SGT Robert King	Abuse: Sgt. Robert King frisked § 87(2)(b) and § 87(2)(b)	
D.SGT Robert King	Abuse: Sgt. Robert King searched § 87(2)(b)	
E.LT Kevin Maloney	Discourtesy: Lt. Kevin Maloney spoke rudely to § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

§ 87(2)(b) filed this complaint via phone with the CCRB on November 12, 2014, on the behalf of his partner, § 87(2)(b) § 87(2)(b)'s daughter, § 87(2)(b) and § 87(2)(b)'s friend, § 87(2)(b) (Encl. 3-A).

On November 11, 2014, at approximately 9:20 p.m., Sgt. Robert King of the 52nd Precinct and Lt. Kevin Maloney of Patrol Borough Bronx stopped § 87(2)(b) and § 87(2)(b) outside of the Alaa and Nagim grocery store at East Gunhill Road and Perry Avenue in the Bronx pursuant to a reported larceny in progress (**Allegation A and Allegation B**). Sgt. King approached § 87(2)(b) and § 87(2)(b) frisked § 87(2)(b) first, and then frisked § 87(2)(b) (**Allegation C**). Sgt. King also allegedly searched § 87(2)(b) (**Allegation D**). § 87(2)(b) who was inside a store directly across the street from the incident, exited the store and saw Sgt. King frisk § 87(2)(b) § 87(2)(b) crossed the street and observed the incident, but he did not approach the officers. § 87(2)(b) then exited the Alaa and Nagim grocery store and argued with Lt. Maloney and Sgt. King about the legality of § 87(2)(b)'s frisk. § 87(2)(b) left the scene during this argument and did not hear it in its entirety. During this argument, Lt. Maloney allegedly told § 87(2)(b) to "get the fuck back" (**Allegation E**). Lt. Maloney and Sgt. King then arrested four other individuals nearby for the reported larceny and allowed § 87(2)(b) and § 87(2)(b) to leave without arresting them or issuing a summons to them (Encl. 4A-O).

This case was originally assigned to Inv. Stephen Abrams-Downey on November 20, 2014, and was reassigned to Inv. John Butler on December 4, 2014.

Mediation, Civil, and Criminal Histories

§ 87(2)(b) and § 87(2)(b) rejected mediation § 87(2)(b). As of March 6, 2015, none of the complainants or victims in the case filed notices of claim with New York City (Encl. 8-D). § 87(2)(b) § 87(2)(c)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b) (Encl. 2F-I).
- Sgt. King has been a member of the NYPD for 15 years and has been the subject of 14 prior CCRB complaints involving 28 allegations. Sgt. King has two substantiated allegations for a stop and a search of a person, and command discipline was recommended in both cases. § 87(4-b), § 87(2)(g)
- Lt. Maloney has been a member of the NYPD for 21 years and has been the subject of 15 prior CCRB complaints involving 39 allegations. Lt. Maloney has eight substantiated allegations, three of which were discourtesy allegations for which command discipline was recommended (Encl. 2C-E).

Potential Issues

Two unidentified males witnessed the incident and were arrested by Sgt. King and Lt. Maloney pursuant to the reported larceny in progress. None of the civilians or officers could identify these individuals or provide contact information for them, and multiple searches of BADS using the incident time and location failed to produce arrest reports for them. There were no other independent witnesses. In addition, video footage was subpoenaed from a business near the incident location, but it did not show the incident.

Findings and Recommendations

Allegation A - Sgt. Robert King stopped § 87(2)(b) and § 87(2)(b)

Allegation B - Lt. Kevin Maloney stopped § 87(2)(b) and § 87(2)(b)

It is undisputed that Sgt. King and Lt. Maloney stopped § 87(2)(b) and § 87(2)(b) under the suspicion that they were involved in a larceny in progress (Encl. 4A-O, Encl. 5C-N, and Encl. 6A-N).

§ 87(2)(b) and § 87(2)(b) stated that they walked two blocks from § 87(2)(b)'s apartment at § 87(2)(b) in the Bronx to the Alaa and Nagim grocery at East Gunhill Road and Perry Avenue in the Bronx. They stated that § 87(2)(b) entered the grocery while § 87(2)(b) and § 87(2)(b) waited for him outside. Two other unidentified individuals also stood outside of the grocery, but § 87(2)(b) and § 87(2)(b) did not interact with them. Sgt. King then approached § 87(2)(b) and § 87(2)(b) and Lt. Maloney approached the other two unidentified individuals. Sgt. King asked for § 87(2)(b) and § 87(2)(b)'s names, where they came from, and their purpose for being outside the grocery. According to § 87(2)(b) Sgt. King also asked if they had been on Webster Avenue and if § 87(2)(b) carried a red purse. § 87(2)(b) told Sgt. King that they had not been on Webster Avenue and that she did not have a red purse.

According to Lt. Maloney and Sgt. King, the officers received a 911 call reporting that four individuals attempted to break into a car at East Gunhill Road and Webster Avenue in the Bronx. Lt. Maloney stated that the 911 caller described the suspects as four Hispanic males and one Hispanic female, and Sgt. King recalled the descriptions as three males and one female. The SPRINT from the incident confirmed the officers' descriptions of the suspects (Encl. 6-H). Lt. Maloney and Sgt. King then responded to East Gunhill Road and Webster Avenue, but they did not find the alleged perpetrators of the car break-in. Lt. Maloney and Sgt. King stated the 911 caller called again shortly after they arrived at the incident location to report that the suspects walked to the Alaa and Nagim grocery at East Gunhill Road and Perry Avenue in the Bronx, and the SPRINT for the incident confirmed the details of this additional 911 call (Encl. 6-H). Lt. Maloney and Sgt. King then responded to this new location and observed § 87(2)(b) and § 87(2)(b) standing outside of the grocery. Lt. Maloney stated that no other person stood outside of the bodega, and Sgt. King stated that two other male individuals stood outside of the bodega. Lt. Maloney stated that he approached § 87(2)(b) and § 87(2)(b) because they were present at the location reported in the 911 call and because he believed that § 87(2)(b) wore a jacket matching a description provided in the 911 call. Sgt. King also stated that he approached § 87(2)(b) and § 87(2)(b) because they were present at the location reported in the 911 call, and he also stated that he approached them due to the appearance of heavy objects in their pockets, indicating that they might have been carrying weapons.

§ 87(2)(g)

According to the 911 communications for the incident, an anonymous male caller stated that three Hispanic males and one Hispanic female attempted to break into a car on East Gunhill Road and Webster Avenue in the Bronx, and the caller also stated that the perpetrators entered a pizzeria directly adjacent to the Alaa and Nagim grocery on East Gunhill Road and Perry Avenue (Encl. 6A-B). § 87(2)(b) and § 87(2)(b) confirmed that they stood at the location reported in the 911 call, and they also confirmed that they stood near two other male individuals, § 87(2)(g)

§ 87(2)(g) The 911 caller further stated that the Hispanic female wore a white shirt and carried a red purse, that one of the Hispanic males wore a black hoodie, that the third Hispanic male wore a blue baseball cap and blue jeans (Encl. 6A-B). These descriptions do not match the clothes that § 87(2)(b) and § 87(2)(b) were alleged to have worn during the incident (Encl. 4A-G) § 87(2)(g)

§ 87(2)(g)

Allegation C - Sgt. Robert King frisked § 87(2)(b) and § 87(2)(b)

It is undisputed that Sgt. King frisked § 87(2)(b) and § 87(2)(b) under the suspicion that they were involved in a larceny in progress (Encl. 4A-O, Encl. 5C-N, and Encl. 6A-N).

According to § 87(2)(b) and § 87(2)(b) Sgt. King frisked § 87(2)(b) first and then frisked § 87(2)(b) after stopping them outside of the Alaa and Nagim grocery and questioning them about a reported larceny. The officers did not arrest § 87(2)(b) or § 87(2)(b). Sgt. King and Lt. Maloney then handcuffed two unidentified males, who were also standing outside of the grocery, and placed them in a nearby RMP (Encl. 4A-G).

Sgt. King stated that he frisked § 87(2)(b) and § 87(2)(b) because he feared for his safety due to the appearance of heavy objects in their pockets which might have been weapons. Sgt. King could not recall if he spoke to § 87(2)(b) or § 87(2)(b) prior to conducting this frisk. Lt. Maloney did not instruct Sgt. King to carry out these frisks, but he stated that it was proper procedure for Sgt. King to conduct these frisks because perpetrators of car break-ins are likely to carry weapons in order to execute the break-ins. Sgt. King then drove to a nearby McDonalds in his RMP, picked up the witness from the 911 call, and returned to the incident location. The 911 caller identified four other individuals, including the two other men standing outside of the grocery, as the perpetrators of the larceny (Encl. 5C-N).

An officer must reasonable suspicion that he/she is in danger by virtue of the individual being armed in order to frisk that individual. People v. DeBour, 40 N.Y.2d 201 (1976) (Encl. 1A-L).

§ 87(2)(g) the information provided in the 911 call did not specify that the perpetrators of the alleged larceny possessed weapons (Encl. 6A-B). In addition, the larceny was reported by an anonymous complainant, and the officers did not verify the details of this call prior to engaging § 87(2)(b) and § 87(2)(b) (Encl. 6A-B). § 87(2)(b), § 87(2)(g)

Additionally, Sgt. King stated that § 87(2)(b) and § 87(2)(b) possessed bulges in their pockets that he believed to be weapons, but he could not clearly describe the size or shape of these bulges (Encl. 5L-N). § 87(2)(g)

Allegation D – Sgt. Robert King searched § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) alleged that Sgt. King searched § 87(2)(b) by placing his hands inside of § 87(2)(b)'s sweatshirt pockets (Encl. 4A-G).

Sgt. King and Lt. Maloney denied this allegation, and Sgt. King stated that he never put his hands in § 87(2)(b)'s pockets or § 87(2)(b)'s pockets during the incident (Encl. 5G and Encl. 5M).

In addition, neither § 87(2)(b) nor § 87(2)(b) witnessed the incident during the time when Sgt. King was alleged to have searched § 87(2)(b) (Encl. 4-K and Encl.4-O).

§ 87(2)(g)

§ 87(2)(g)

Allegation E – Lt. Kevin Maloney spoke rudely to § 87(2)(b)

§ 87(2)(b) alleged that Lt. Maloney told him to “get the fuck back” during an argument about the legality of § 87(2)(b)'s frisk (Encl. 4-K).

According to § 87(2)(b) he exited the Alaa and Nagim grocery store at which time § 87(2)(b) and § 87(2)(b) informed him that they had been frisked. § 87(2)(b) then argued with Lt. Maloney and Sgt. King with a raised voice about the legality of § 87(2)(b)'s frisk. During the argument, Lt. Maloney allegedly told § 87(2)(b) to “get the fuck back.” After approximately 15 minutes of arguing, § 87(2)(b) and § 87(2)(b) left the scene and returned home (Encl.4-O) .

Lt. Maloney denied telling § 87(2)(b) to “get the fuck back,” and he stated that neither he nor Sgt. King used any profanity during the incident (Encl. 5-H). Sgt. King did not hear Lt. Maloney tell § 87(2)(b) to “get the fuck back,” and he stated that neither he nor Lt. Maloney used any profanity during the incident (Encl. 5-N). Moreover, § 87(2)(b) and § 87(2)(b) were present during the entire argument between § 87(2)(b) and the officers, and neither § 87(2)(b) nor § 87(2)(b) alleged that Lt. Maloney told § 87(2)(b) to “get the fuck back” (Encl. 4A-G). In addition, neither § 87(2)(b) nor § 87(2)(b) alleged that the officers used profanity at any time during the incident (Encl. 4A-G). Lastly, while § 87(2)(b) did not hear Lt. Maloney tell § 87(2)(b) to “get the fuck back;” he was not present during the entire argument between § 87(2)(b) and the officers (Encl. 4O).

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date